

### REMARKS

Favorable consideration of this Application as presently amended and in light of the following discussion is respectfully requested.

After entry of the foregoing Amendment, Claims 1-20 are pending in the present Application. Claims 1, 10, 19, and 20 have been amended to address cosmetic matters of form. No new matter has been added.

By way of summary, the Official Action presents the following issues: Claims 1-20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Downs et al. (U.S. Patent No. 6,226,618, hereinafter Downs) in further view of Kawamae et al. (U.S. Patent No. 6,778,757, hereinafter Kawamae).

### REJECTION UNDER 35 U.S.C. § 103

The outstanding Official Action has rejected Claims 1-20 under 35 U.S.C. § 103 as being unpatentable over Downs in further view of Kawamae. The Official Action contends that Downs discloses all of the Applicants' claim limitations with the exception of authenticating a license management capability of a recording medium loaded to a vending apparatus. The Official Action cites Kawamae as disclosing this more detailed aspect of the Applicants' invention and states that it would have been obvious to one skilled in the art at the time the invention was made to combine the cited references for arriving at the Applicants' claims. Applicants respectfully traverse the rejection.

Amended Claim 1 recites, *inter alia*, an information vending apparatus including:

... usage condition generating means for generating usage conditions in response to a purchase selection of the information for sale;

...

authentication means for authenticating a license management capability of a portable recording medium directly or indirectly loaded on said information vending apparatus; and,

writing means for writing said purchase selection along with said usage conditions for said license management capability and said cryptographic key to said portable recording medium upon authentication.

Downs describes a digital content distribution platform (100). The platform enables content providers (101) to distribute content to customers via a transmission infrastructure (107) and hosting cite (111) (*See* Fig. 1D).<sup>1</sup> Specifically, content is packaged to form secure containers (SC) for delivery. For example, as outlined Downs at Steps 142-148 of column 19, a user purchasing a secure container initiates a series of communications to decrypt the secure container by accessing encryption keys of a clearing house (105) for obtaining a symmetric key for decrypting content.

As noted in the Official Action at page 4, Downs does not disclose or suggest authenticating a license management capability of a recording medium loading to a vending apparatus.

Kawamae describes a recording/reproduction apparatus (11) for recording and reproducing data including duplication control information. The apparatus includes a DVD drive (15), an MPEG encoder (13), a compression unit (14), an expansion unit (16), and an MPEG decoder (17). In operation, an input signal is provided at (12) for recording to a DVD/RAM. The MPEG encoder converts the input signal into an MPEG format.<sup>2</sup> An authentication unit (18) is provided for authenticating the device generating the input signal. In the case where authentication fails, the encoding is expended. If encoding is permitted based upon the authentication of the drive generating the input signal, the real time encoder (14) converts the scrambled MPEG encoded signal into a format for writing the scrambled MPEG encoded signal to the DVD-RAM.<sup>3</sup> A compliance mark detection unit (24),

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<sup>1</sup> Downs at column 8, line 55 through column 9, line 3.

<sup>2</sup> Kawamae at Fig. 1; column 3, line 43 through column 4, line 32.

<sup>3</sup> Kawamae at column 4, lines 53-55.

authentication unit (25), and a CSS authentication unit (27) are provided in association with the DVD drive. The authentication unit (25) authenticates the input and output devices (i.e., the MPEG encoder at the time of recording and the MPEG decoder at the time of reproduction). The compliant mark detection unit records a compliant mark for indicating that the DVD-RAM drive is a compliant device at the time of recording. The CSS authentication unit verifies a scrambling format of the signal. Finally, the real time decoder (16) converts the signal of the DVD-RAM into an MPEG format in real time. The authentication and water mark identification steps are then performed again for outputting the signal (37).<sup>4</sup>

Conversely, in an exemplary embodiment of the Applicants' invention, content is selected from a list of available content by a user via a vending apparatus. Upon selection of content for purchase, usage conditions are generated along with an encryption key for decrypting the encrypted, selected content. Upon authentication that a portable recording medium loaded to the vending apparatus employs a license management capability, the purchase selection, along with the cryptographic key, is recorded to the recording medium. In this way, the consumer can store the selected content from the vending apparatus by providing a recording medium compatible with a predetermined Digital Rights Management (DRM) format to the vending apparatus.<sup>5</sup>

Kawamae deals with authenticating encoding devices and identifying a water mark in data, which is to be reproduced. Kawamae does not disclose or suggest any means by which a recording medium is authenticated to ensure that the recording medium is capable of supporting a license management capability. While the authenticating structure identified in Kawamae authenticates data, this is not the identical function recited in Applicants' amended

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<sup>4</sup> Kawamae at column 4, line 56 through column 5, line 13.

<sup>5</sup> Application at Figs. 3 and 6, and associated description in the specification.

Claim 1. Applicants' amended Claim 1 recites a function of authenticating a license management capability of a recording medium loaded to a vending apparatus.

In this regard, the PTO reviewing court recently emphasized that conclusory findings that omit analysis as to "means" claim limitations are improper in Gechter v. Davidson 43 U.S.P.Q.2d 1030, 1035 (Fed. Cir. 1997) as follows:

In addition, the [PTO] never construed the scope of the structures disclosed in the specification for the claimed "receiving means," nor did the [PTO] expressly find that the "receiving means" disclosed in the specification was structurally equivalent to that embodied in [the reference]. Moreover, the [PTO] also failed to define the exact function of the receiving means, as well as to find that [the reference] disclosed the identical function. (emphasis added, citation omitted.)

As Kawamae does not identify authenticating a license management capability of a recording medium, to provide the identical function of the Applicants' claims, a modification to the reference must be performed using unfounded assumptions and/or speculation.

(See *In Re Warner*, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967) ("The Patent Office has the initial duty of supplying the factual basis of its rejection. It may not, because it may doubt the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis").

As such, there is no analysis by the Patent and Trademark Office as to how this completely dissimilar structure and function can be said to be structurally equivalent to the Claim 1 means and corresponding functionality. *Gechter* requires an explanation of how the Kawamae functions disclosed at the relied upon section, are identical to the functions claimed. As noted above in *Gechter*, this identical function must be found in the reference to anticipate the Applicants' claims.

As Kawamae does not disclose or suggest authenticating a license management capability of a portable recording medium loaded to a vending apparatus, as recited in

amended Claim 1, or any claim depending therefrom, and, as independent Claims 10, 19, and 20 recite substantially similar limitations, Applicants respectfully request that the rejection of Claims 1-20 under 35 U.S.C. § 103 be withdrawn.


CONCLUSION

Should the above distinctions be found unpersuasive, Applicants respectfully request that the Examiner provide an explanation via Advisory Action pursuant to MPEP § 714.13 specifically rebutting the points raised herein for purposes of facilitating the appeal process.

Consequently, in view of the foregoing amendment and remarks, it is respectfully submitted that the present Application, including Claims 1-20, is patently distinguished over the prior art, in condition for allowance, and such action is respectfully requested at an early date.

Respectfully submitted,

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